

In re) Fair Hearing No. 11,801
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Appeal of)

The petitioner appeals the decision by the Department of Social Welfare denying his application for Medicaid. The issue is whether the petitioner is disabled within the meaning of the pertinent regulations.

The petitioner is a forty-one-year-old man with a high school education. He is diabetic, but this condition is controlled by medication. He worked for many years as a security systems installer. It appears that this job was strenuous in that it required frequent kneeling and maneuvering into tight and awkward spaces.

The petitioner's primary problem, work-wise, is with arthritis and ligament damage in his knees. The petitioner has not worked since 1989, and the medical record shows that he has been in treatment with his current treating orthopedist for his knee problems since at least April, 1990. In spring, 1991, he underwent surgery on his left knee to repair ligament damage. Following the surgery he continued to experience pain and limitation in both knees.

In July, 1992, he underwent surgery in his right knee, but still his problems have persisted.

The petitioner maintains that he must rest and elevate his legs after any prolonged walking or standing, but that he also experiences pain and stiffness if he sits too long. This is consistent with the medical evidence in this matter, which consists almost exclusively of the extensive office notes and hospital reports of the petitioner's treating orthopedist. The most recent report from the orthopedist, dated April 6, 1993, summarizes the petitioner's history and current level of functioning as follows:

This patient was operated on with a reconstruction of the anterior cruciate ligament of the left knee in May of 1991. The patient has persistent left knee pain with intermittent swelling and a feeling of instability.

The patient was operated on for the right knee on July 20, 1992 with excision of a loose body and debridement. The patient now has complaints of right knee pain and intermittent swelling.

I last saw the patient on March 12, 1993, and in summary he has osteoarthritis of the left knee in addition to a probably painful neuroma of that knee. He also has some changes of osteoarthritis in the right knee.

The knee problems have left him with great problems in getting around. The patient has pain from his knees which means that he must rest them and lay down after walking every day. However, he can walk around in the house and short distances without major problems. He has discomfort, though, which results in inability to stand up for long periods of time because of this pain. However, he also has problems with sitting for longer periods of time as he then becomes stiff.

Based on the above report and the other uncontroverted

medical evidence it is found that for at least the last year the petitioner has been unable to perform any job that would require prolonged standing, walking, or sitting, and which would not allow for periodic rest breaks. This would preclude the petitioner's former work, and there is no evidence as to the existence of any other jobs that might accommodate these limitations.¹

ORDER

The Department's decision is reversed.

REASONS

Medicaid Manual Section M 211.2 defines disability as follows:

Disability is the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment, or combination of impairments, which can be expected to result in death or has lasted or can be expected to last for a continuous period of not fewer than twelve (12) months. To meet this definition, the applicant must have a severe impairment, which makes him/her unable to do his/her previous work or any other substantial gainful activity which exists in the national economy. To determine whether the client is able to do any other work, the client's residual functional capacity, age, education, and work experience is considered.

In this case, given the uncontroverted medical evidence

¹Following the submission of the written evidence in this matter the hearing officer, after informing the Department that in his view the petitioner had established a prima facie showing of disability (see infra), held the record open to allow the Department to determine whether it wished to pursue additional medical or vocational evidence. The Department later indicated that it did not wish to do so.

of the petitioner's pain and limitations which preclude his returning to his former work, and absent any evidence that there exist in the national economy substantial numbers of any other jobs that might accommodate these limitations, it must be concluded that the petitioner has established that he is disabled under the above regulations. 20 C.F.R. § 416.966.² The Department's decision is, therefore, reversed.

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²Because the petitioner in this case cannot sit for prolonged periods of time he cannot be found able to engage in a full range of "sedentary work". See 20 C.F.R. § 416.967(a). Thus, this is not a case in which the existence of alternative jobs can be decided on the basis of the so-called "grid" regulations. See Id. §§ 404, Subpart P, Appendix II, and 416.969.